

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:10cv324

TIMOTHY G. ALEXANDER, SR.,)
)
 Petitioner,)
)
 v.)
)
UNITED STATES OF AMERICA,)
)
 Respondent.)

)

ORDER

THIS MATTER is before this Court upon Petitioner's Motion to Vacate, Set Aside, or Correct Sentence. (Doc. No. 1). Respondent has filed an Answer and Motion for Summary Judgment. (Doc. Nos. 8, 9.)

In accordance with Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), the Court advises Petitioner, who is proceeding pro se, of the heavy burden that he carries in responding to Respondent's Motion for Summary Judgment. Rule 56(e)(2) of the Federal Rules of Civil Procedure, provides:

When a motion for summary judgment is properly made and supported, an opposing party may not rely merely on allegations or denials in its own pleading; rather, its response must - by affidavits or as otherwise provided in this rule - set out specific facts showing a genuine issue for trial. If the opposing party does not so respond, summary judgment should, if appropriate, be entered against that party.

Fed. R. Civ. P. 56(e)(2). This language means that if Petitioner has any evidence to show that there is a genuine issue for trial, he must now present it to this Court in a form that would otherwise be admissible at trial, that is, in the form of affidavits or unsworn declarations. An

affidavit is a written statement sworn before a notary public. An unsworn statement, made and signed under the penalty of perjury, may also be submitted. Affidavits or sworn statements must be presented by Petitioner to this Court within thirty (30) days of the entry of this Order. As stated by Rule 56(e)(2), Petitioner's failure to respond may result in the granting of summary judgment to Respondent, that is, a dismissal with prejudice of the Complaint.

THEREFORE, IT IS HEREBY ORDERED that Petitioner has thirty (30) days from the entry of this Order to file his response, including any evidence, to Respondent's Motion for Summary Judgment.

Signed: November 15, 2010

A handwritten signature in cursive script, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.
Chief United States District Judge

